

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: :

WONDERWORK, INC. : Chapter 11

Debtor, :
-X Case No. No. 16-13607 (SMB)

VINCENT A. SAMA, as Litigation Trustee of the
WW LITIGATION TRUST,

Plaintiff, : Adv. Pro. No. 18-01873 (SMB)

-against-

BRIAN MULLANEY, HANA FUCHS,
THEODORE DYSART, RAVI KANT, JOHN J.
CONEYS, STEVEN LEVITT, CLARK KOKICH,
STEVEN RAPPAPORT, RICHARD PRICE, and
MARK ATKINSON,

Defendants. :
-X

: **DECLARATION OF
JOHN G. McCARTHY IN SUPPORT
OF MOTION TO DISMISS OR IN
THE ALTERNATIVE FOR A MORE
DEFINITE STATEMENT**

JOHN G. McCARTHY, pursuant to 28 U.S.C. § 1746, declares:

1. I am a member of the bar of this Court and a partner with the law firm of Smith,
Gambrell & Russell, LLP, counsel to defendants Steven Levitt, Clark Kokich, Steven Rappaport
and Richard Price (the “Moving Defendants”) in the above-captioned adversary proceeding (the
“Adversary Proceeding”).

2. I submit this Declaration in support of the Moving Defendants’ motion for entry
of an Order by the District Court dismissing the claims as asserted against them in the Chapter
11 Trustee’s Adversary Complaint, or in the alternative for a more definite statement. A true and
correct copy of the complaint (the “Complaint”) in the adversary proceeding pending in the

United States Bankruptcy Court for the Southern District of New York (the “Adversary Proceeding”) is attached hereto as Exhibit A.

3. The Adversary Proceeding is associated with the Chapter 11 bankruptcy case filed by WonderWork, Inc. (“WonderWork”). The Complaint makes repeated references to a report issued in the main bankruptcy case by a court-appointed examiner (e.g., Complt. ¶¶ 1, 2, 26 – 34, 56, 95, 105, 122, 169). The Examiner’s Report is Docket No. 303 in the main case. Relevant pages of the Examiner’s Report are attached hereto as Exhibit B.

4. The Examiner’s Report cited to, and relied upon, hundreds of exhibits that were similarly filed on the docket of the main bankruptcy case. Exhibit C hereto is referred to in the Examiner’s Report as Document Exhibit 193.

5. A copy of Document Exhibits 75 and 76 to the Examiner’s Report, minutes from WonderWork’s Board of Directors Meetings held on December 23, 2015 and March 8, 2016, are attached hereto as Exhibit D.

6. A copy of “Mullaney Exhibit 41” to the Examiner’s Report, the Employment Agreement of defendant Brian Mullaney, is attached hereto as Exhibit E.

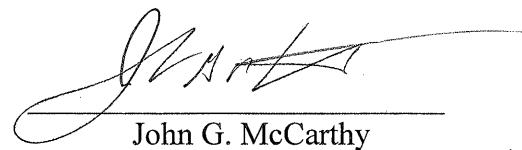
7. The Trustee has also filed an adversary proceeding against KPMG LLC entitled *Vincent Sama as Litigation Trustee of the WW Litigation Trust v. KPMG LLC*, Adv. Pro. No. 18-1868 (SMB) (Bankr. S.D.N.Y) (the “KPMG Complaint”). A true and correct copy of the KPMG Complaint is attached hereto as Exhibit F.

8. The Moving Defendants do not (and will not) consent to the Bankruptcy Court entering final judgment on any of the claims asserted against them in the Adversary Proceeding.

9. The Moving Defendants do not consent to the Bankruptcy Court finally deciding this motion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 2, 2019.



A handwritten signature in black ink, appearing to read "John G. McCarthy".

John G. McCarthy